

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT:	Caprotti et al.)	
SERIAL NO.:	10/675,171)	Examiner: CEPHIA TOOMER
FILED:	September 30, 2003)	Art Unit: 1797
TITLED:	ADDITIVES AND FUEL OIL COMPOSITIONS)	Confirmation No. 5909
)	Atty. Docket No. 2002M013

Assistant Commissioner for Patents
Washington, DC 20231

BRIEF ON APPEAL

Sir:

This is an appeal from the decision of the Examiner to finally reject claims 1 through 15, all claims remaining in the above-identified patent application. This final rejection was presented in an Office Action mailed December 13, 2007. The Notice of Appeal was filed on March 14, 2008.

This brief is being filed in triplicate. It is requested that the requisite fee set forth in 37 CFR Section 1.17(f) be charged to Deposit Account No. 05-1710.

REAL PARTY IN INTEREST

All rights to the above-identified application were assigned, via an unrecorded assignment, from the named inventors to Infineum International Limited, a company incorporated in England. Infineum International Limited is the real party in interest to these proceedings.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences relating to this application and no decision in any other appeal or interference impacts the decision in the present appeal.

STATUS OF CLAIMS

The application now contains claims 1 through 15, as set forth in the attached Appendix. Claims 1 through 15, all claims remaining in this application, stand rejected.

STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

A Response containing one amendment and remarks was filed on October 3, 2007. The Response was considered by the Examiner, but the Examiner maintained the rejections discussed herein.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is an additive composition for fuel oils. In one embodiment, the additive composition is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising: an additive, (a), comprising salt derivatives of a plurality of monocarboxylic acids, each having from 10 to 24 carbon atoms, less than 7 mass % of which acids from which salt derivatives are derived having a linear chain and being saturated, and the balance being unsaturated; at least 35 mass % of said balance being polyunsaturated.

The additive (a) is described at page 4, line 13 to page 7, line 11. The fuel oil is described at page 10, line 10 to page 11, line 22.

In another embodiment of the invention, the additive composition that is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising or obtained by mixing: an additive, (a'), comprising salt derivatives of a plurality of monocarboxylic acids, each having from 10 to 24 carbon atoms, less than 7 mass % of which acids from which salt derivatives are derived having a linear chain and being saturated, and the balance being unsaturated, at least 35 mass % of said balance being polyunsaturated; and either or both of an additive, (b), in the form of an anti-oxidant additive and an additive, (c), in the form of an electrical-conductivity improver additive.

The additive (a') is described at page 4, line 13 to page 7, line 11. The fuel oil is described at page 10, line 10 to page 11, line 22.

In yet another embodiment, the additive composition is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising or obtained by mixing: an additive, (a''), comprising salt derivatives of one or more monocarboxylic acids, each acid having from 10 to 24 carbon atoms; and an additive, (c), in the form of an electrical-conductivity improver additive.

The additive (a'') is described at page 5, line 4 to page 7, line 11. The fuel oil is described at page 10, line 10 to page 11, line 22.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(1) Whether claims 1-15 are unpatentable for being obvious under 35 U.S.C. §103(a) over US Patent No. 6,610,111 ("Krull").

The application now contains claims 1 through 15 that stand or fall together.

ARGUMENT

(1) **Rejection of Claims 1-15 under 35 U.S.C. §103(a)**

The Examiner alleges claims 1-15 are unpatentable under 35 U.S.C. §103(a) over Krull. Specifically, the Examiner states the following: (1) Krull teaches most of the limitations of the claims, but it does not specifically teach a composition wherein a plurality of salts of monocarboxylic acids are present; (2) it would have been obvious to one of ordinary skill in the art to use a plurality of the salts of these acids because Krull teaches that at least one acid is used and the language "at least one" suggests that a plurality may be present in the composition; and (3) it is well settled that a reference that recites an acid renders obvious the salt of the acid where both the acid and the salt function similarly.

The rule of law is as follows: For a proper rejection under Section §103, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be

found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The present invention as recited in claim 1 is an additive composition comprising **salt derivatives** of a plurality of monocarboxylic acids. In contrast to the present invention, Krull teaches additives comprising fatty acid mixtures. There is no teaching in Krull of additive compositions comprising **salt derivatives** of a plurality of monocarboxylic acids as recited in claim 1. As a result, Krull does not teach or suggest all of the limitations recited in claim 1, and the rejection of claim 1 under §103 is improper. Claim 1 is patentable over Krull.

Claims 4-14 directly or indirectly, depend from claim 1 of the present invention and recite the invention in varying scope. For the reasons discussed above, Krull does not teach all of the limitations in claim 1 as further limited by claims 4-14. Specifically, Krull does not teach an additive composition comprising **salt derivatives** of a plurality of monocarboxylic acids as recited in the claims. Claims 4-14 are patentable over Krull.

Like independent claim 1, independent claims 2 and 3 recite additive compositions comprising **salt derivatives** of one or more monocarboxylic acids. In contrast to the present invention, Krull teaches additives for fuel oils having comprising fatty acid mixtures. In Krull, there is no teaching of the additive compositions comprising salt derivatives of one or more monocarboxylic acids as recited in claims 2 and 3.

Further, claims 2 and 3 contain limitations pertaining to the inclusion of either or both of an additive, (b), in the form of an anti-oxidant additive and an additive, or (c), in the form of an electrical-conductivity improver additive in combination with salt derivatives of one or more monocarboxylic acids. This combination is not taught by Krull.

For the reasons stated above, Krull does not teach or suggest all of the limitations recited in claims 2 and 3, and the rejection of claims 2 and 3 under 103 is improper. Claims 2 and 3 are patentable over Krull.

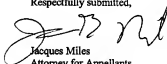
Claim 15 directly depends from claim 3 of the present invention and recites the invention in varying scope. For the reasons discussed above, Krull does not teach or

suggest all the claim limitations in claim 3 as further limited by claim 15. Claim 15 is patentable over Krull.

SUMMARY

For the foregoing reasons, Appellants submit that claims 1-15 are not obvious under 35 U.S.C. §103(a) over Krull. Accordingly, Appellants request that the Examiner's decision to finally reject the claims of this application on the grounds stated above be reversed and the appealed claims be deemed allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Miles', is written over the typed name.

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Claims Appendix

This listing of claims will replace all prior versions and listings of claims in the application:

1. An additive composition that is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising: an additive, (a), comprising salt derivatives of a plurality of monocarboxylic acids, each having from 10 to 24 carbon atoms, less than 7 mass % of which acids from which salt derivatives are derived having a linear chain and being saturated, and the balance being unsaturated, at least 35 mass % of said balance being polyunsaturated.

2. An additive composition that is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising or obtained by mixing: an additive, (a'), comprising salt derivatives of a plurality of monocarboxylic acids, each having from 10 to 24 carbon atoms, less than 7 mass % of which acids from which salt derivatives are derived having a linear chain and being saturated, and the balance being unsaturated, at least 35 mass % of said balance being polyunsaturated; and either or both of an additive, (b), in the form of an anti-oxidant additive and an additive, (c), in the form of an electrical-conductivity improver additive.

3. An additive composition that is free of polycyclic carboxylic acids and of acid derivatives thereof, for a fuel oil composition, comprising or obtained by mixing: an additive, (a''), comprising salt derivatives of one or more monocarboxylic acids, each acid having from 10 to 24 carbon atoms; and an additive, (c), in the form of an electrical-conductivity improver additive.

4. The additive composition as claimed in claim 1 additionally comprising or obtained by mixing: an additive, (b), in the form of an anti-oxidant additive.

5. The additive composition as claimed in claim 1 additionally comprising or obtained by mixing: an additive, (c), in the form of an electrical-conductivity improver additive.

6. The additive composition as claimed in claim 1 wherein a major proportion of the derivatives of the monocarboxylic acids has 18 carbon atoms.

7. The additive composition as claimed in claim 6 wherein the acids include oleic acid, linolenic acid and linoleic acid.

8. The additive composition as claimed in claim 1 additionally comprising, or obtained by mixing, a carrier or diluent.

9. A fuel oil composition that is free of polycyclic carboxylic acids and of acid derivatives thereof comprising, or obtained by mixing, a fuel oil in a major proportion, and an additive composition as claimed in claim 1, in a minor proportion.

10. The fuel oil composition as claimed in claim 9 wherein the fuel oil is a middle distillate fuel, a jet fuel or a Fischer-Tropsch fuel.

11. The fuel oil composition as claimed in claim 10 wherein the fuel oil is a middle distillate fuel having a cloud point of -5°C or lower.

12. The fuel oil composition as claimed in claim 10 where the fuel oil is a middle distillate fuel containing less than 500 ppm by mass of sulphur.

13. A method of operating an internal combustion engine using, as fuel for the engine, a fuel oil composition as claimed in claim 9.

14. The method of claim 13 wherein the fuel oil is a middle distillate fuel containing less than 500 ppm by mass of sulphur.

15. The additive composition as claimed in claim 3 additionally comprising or obtained by mixing: an additive, (b), in the form of an anti-oxidant additive.

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Amdt. Dated January 7, 2009
Reply to Office action of Dec. 13, 2007

Evidence Appendix

None

Related Proceedings Appendix

None